

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EUGENE MOORE,

Petitioner,

No. CIV S-02-0007 JAM DAD P

vs.

A.A. LAMARQUE, et al.,

Respondents.

ORDER

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Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a judgment of conviction entered against him in the Sacramento County Superior Court on February 1, 2000, for robbery. On March 30, 2004, this action was stayed and the case was administratively closed while petitioner exhausted his state court remedies. On March 17, 2008, the stay was lifted and the case was re-opened. On May 9, 2008, the court filed an order deeming petitioner's fifth amended petition, filed on December 6, 2007, as the operative pleading in this action. Respondents were ordered to file their response.

On May 16, 2008, petitioner filed a motion for an extension of time to file his post-exhaustion amended petition and on May 19, 2008, filed that petition. On May 22, 2008,

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1 petitioner filed a motion requesting that the court deem his petition filed on May 19, 2008, as the
2 operative petition for this action.

3 In the interests of justice, the court will grant petitioner's motion of May 22, 2008
4 and deem his sixth amended petition, filed May 19, 2008, as the operative petition in this action.
5 Petitioner's May 16, 2008 motion for an extension of time will be granted nunc pro tunc.

6 On June 30, 2008, respondents filed a request for an enlargement of time to file
7 their response to the post-exhaustion amended petition. In light of this order, the court will grant
8 an enlargement of time; however, respondents will be directed to respond to petitioner's sixth
9 amended petition, filed with this court on May 19, 2008.

10 On May 15, 2008, petitioner filed a motion for judicial notice. Petitioner provides
11 no legal basis for the court to grant judicial notice but rather has merely attached over 200 pages
12 of exhibits to the motion. The motion will be denied and the documents filed with the motion,
13 will be disregarded.

14 On May 19, 2008, petitioner filed a motion for the appointment of counsel. The
15 motion will be denied as the court does not find that the interests of justice would be served by
16 the appointment of counsel.

17 On May 19, 2008, petitioner also filed a motion for an evidentiary hearing. On
18 May 22, 2008, petitioner filed a motion for leave to conduct discovery and an amended motion
19 for an evidentiary hearing. On June 6, 2008, respondents filed their opposition, arguing that the
20 motions are premature since they have yet to file their responsive pleading. Petitioner has filed a
21 reply to the opposition. The court agrees that petitioner's motions are premature; therefore, the
22 motions will be denied.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. Petitioner's May 16, 2008 motion for an extension of time to file his post-
25 exhaustion amended petition, is granted nunc pro tunc;

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2. Petitioner's May 22, 2008 motion to deem the habeas petition, filed on May 19, 2008, as the operative pleading in this action, is granted;

3. Petitioner's sixth amended petition, filed on May 19, 2008 (court document no. 83), is deemed the operative pleading in this action;

4. Petitioner's May 19, 2008 motion for the appointment of counsel is denied;

5. Petitioner's May 19, 2008 motion for an evidentiary hearing is denied;

6. Petitioner's May 22, 2008 motion for leave to conduct discovery is denied;

7. Petitioner's May 22, 2008 amended motion for evidentiary hearing is denied;

8. Respondents' June 30, 2008 request for an enlargement of time is granted; and

9. Within sixty days from the service of this order, respondents shall file their response to petitioner's sixth amended petition, filed on May 19, 2008.

DATED: July 2, 2008.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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